

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause Nos. 1:09-cr-117-1-SEB-DML
)	1:09-cr-120-1-SEB-DML
)	
MONTE M. LESURE,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the November 9, 2010, Order entered by the Honorable Sarah Evans Barker designating the duty Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed on October 29, 2010. Pursuant to that Order, the Court herein submits proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§ 3401(I) and 3583(e). Proceedings were held on January 11, 2013, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*.¹

On January 11, 2013, Monte M. Lesure (“Lesure”) appeared in person with appointed counsel, Michael Donahoe. The government appeared by A. Brant Cook, Assistant United States Attorney. U. S. Parole and Probation appeared by Jason Phillips, U. S. Parole and Probation officer.

The Court conducted the following procedures in accordance with Rule 32.1(b)(2), Fed.

¹ All proceedings were recorded by suitable sound recording equipment unless otherwise noted. *See*, Title 18 U.S.C. § 3401(e).

R. Crim. P. and Title 18 U.S.C. § 3583:

1. Mr. Lesure was advised of the nature of the violations alleged against him and acknowledged receipt of the notice of said allegations.
2. A copy of the Petition for Warrant or Summons for Offender Under Supervision was provided to Mr. Lesure and his counsel, who informed the Court that they had read and understood the violations listed in the Petition and waived further reading thereof.
3. Mr. Lesure was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.
4. Mr. Lesure was advised he would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.
5. Mr. Lesure was advised he had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.
6. Mr. Lesure was advised that if the preliminary hearing resulted in a finding of probable cause that Mr. Lesure had violated an alleged condition or conditions of his supervised release as set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with the District Court's designation.
7. Mr. Donahoe stated that Mr. Lesure would stipulate there is a basis in fact to hold him on the specifications of violations of supervised release set forth in the Petition. Mr. Lesure executed a written waiver of the preliminary hearing, which was accepted by the Court.
8. Mr. Lesure stipulated that he committed Violations 1-4 as set forth identically in each of the Petitions for Warrant or Summons for an Offender Under Supervision as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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- | | |
|---|---|
| 1 | <i>“The defendant shall not commit another federal, state, or local crime.”</i> |
| 2 | <i>“The defendant shall not illegally possess a controlled substance.”</i> |
| 3 | <i>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”</i> |

On October 14, 2010, Mr. Lesure was arrested by the Illinois State Police after a several month investigation. On this day, he was in possession of more than 30 grams, but not more than 500 grams, of marijuana, which he knowingly delivered to a confidential source of the Illinois State Police.

On October 20, 2010, Mr. Lesure was indicted in the Fourth Judicial Circuit in Effingham County, Illinois, charging him with Unlawful Delivery of Cannabis, and Unlawful Possession With Intent to Deliver Cannabis (10-CF-217).

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“The defendant shall not leave the judicial district without the permission of the Court or the probation officer.”

When Mr. Lesure was arrested in Effingham County, Illinois, on October 14, 2010, he did not have permission to travel outside the Southern District of Indiana. According to Special Agent Brandon Grzechowiak of the Illinois State Police, their investigation of Mr. Lesure revealed he was making regular trips from Indianapolis to Effingham County, Illinois, for the purpose of delivering marijuana.

9. The Court placed Mr. Lesure under oath and directly inquired of Mr. Lesure whether he admitted the violation of the specifications of his supervised release set forth above. Mr. Lesure stated that he admitted the above violations as set forth.

10. Counsel for the parties stipulated to the following:

a. The most serious grade of violation is Grade A, pursuant to U.S.S.G.

§ 7B1.1(a)(3).

b. Mr. Lesure has suffered criminal convictions that yield a criminal history category of IV.

c. The term of imprisonment applicable upon revocation of Mr. Lesure’s supervised release, therefore, is 24-30 months imprisonment. *See*, U.S.S.G. § 7B1.4(a).

11. On January 11, 2013, the Court, having heard the admissions of the Defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, found that the Defendant, Monte M. Lesure, violated the above-delineated conditions in the Petition.

Mr. Lesure's supervised release is therefore REVOKED and he is sentenced to the custody of the Attorney General or his designee for a period of twenty (20) months. Mr. Lesure's supervised release is also TERMINATED. The Defendant is remanded into the custody of the United States Marshal's service for the execution of this sentence.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. § 636(b)(1)(B) and (C), and Rule 72(b) of the Federal Rules of Civil Procedure. Any party desiring said review shall have ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts, conclusions of law, and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a de novo determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Lesure's supervised release and imposing a sentence of imprisonment of twenty (20) months in the custody of the Attorney General or his designee with no supervised release to follow.

IT IS SO RECOMMENDED this 02/04/2013



Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

Distribution:

A. Brant Cook
Assistant United States Attorney

Michael Donahoe
Indiana Community Federal Defender

U. S. Parole and Probation

U. S. Marshal